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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/730,334	12/05/2000	Bradley S. Butler	P00424	8126

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EXAMINER

WINGOOD, PAMELA LYNN

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 10/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/730,334

Applicant(s)
Butler et al.

Examiner
Pamela Wingood

Art Unit
3736



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5.30.02
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6, 7, 10, 11, and 23-39 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6, 7, 10, 11, and 39 is/are allowed.
- 6) ☒ Claim(s) 23-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:

- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____.
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- ☐ Interview Summary (PTO-413) Paper No(s). _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1.. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 23-25, 27-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morrison et al. in view of Gerber et al.

Morrison et al. discloses a test tube assembly rack having a rack to support a plurality of tubes, a side and top opening, a top shelf and lower shelf (Fig. 2), a handle area, and a the support holes are designed such they are capable of supporting any of the tubes or needles associated with the spinal procedure; however, it does not disclose a actual needle set associated with the rack. Gerber discloses a spinal tapping set having a Gerber et al. discloses a spinal fluid collection system disclosing a plurality of CSF tubes and a spinal tap assembly (10), in an analogous art for the purpose of taking a spinal sample and holding the tubes. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device of Morrison et al. as shown by Gerber et al. because the application to a spinal procedure would give the device greater functionality.

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3. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morrison et al. and Gerber et al. as applied to claims above, and further in view of Stockdale et al. .

Morrison et al. and Gerber et al. disclose the limitations above but do not disclose indentations.

Stockdale et al. discloses limitations in an analogous art for the purpose of supporting the test tube. It would have been obvious to one of ordinary skill in the art at the time the invention was made the device of Morrison et al and Gerber et al. as shown by Stockdale because the indentations would provide balance to the test tubes.

4. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morrison et al. And Gerber et al. as applied to claims 23-25, 27-37 above, and further in view of Berry.

Morrison et al. and Gerber et al. discloses the limitations above but does not disclose the use of an internally sterile package to seal the holder and the CSF tubes.

Berry discloses a kit having a holder and medical sharps in a sealed sterile environment in an analogous art for the purpose of ensuring the patients safety. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified the device of Morrison et al and Gerber et al. as shown by Berry because the use of a sterile containment device would ensure that contaminants are not introduced to the patient during the sterile technique (Col. 2, lns. 29-31).

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Allowable Subject Matter

5. Claims 6, 7, 10, 11 and 39 are allowed

Response to Arguments

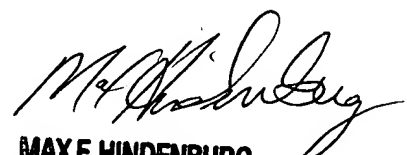
Applicant has submitted new claims and accordingly a new rejection is applied to the Claims. Applicant should note the claims above noted as being allowable.

Any questions directed to this application should be directed to Pamela Wingood who can be reached on (703) 308-2676 from 7:30-5:00PM on Monday-Thursday and every other Friday.


Pamela Wingood

Patent Examiner

September 30, 2002


MAX F. HINDENBURG
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